IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
Misc. Civil Application No.692/2006 (Review) in
Second Appeal No.229 of 2004

Office Notes, Office Memoranda of Coram, : Appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

Mr. S. V. Sohoni, Advocate for the Applicant.
Mr. S. T. Harkare, Advocate for the Non-applicant.

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CORAM : K.J. ROHEE,J.
DATED : MARCH 2, 2007

Heard Mr. S. V. Sohoni, Advocate for the applicant (hereinafter referred to as "the plaintiff" for the sake of convenience) and Mr. S. T. Harkare, Advocate for the non-applicant (hereinafter referred to as "the defendant").

2. The plaintiff is the maternal uncle of the defendant. The plaintiff instituted a suit for possession of a plot as well as machineries and for partnership account and recovery of partnership share. It is the case of the plaintiff that he had purchased the said plot as well as machinery in his name out of his own funds and gave the same to the defendant in pursuance of the partnership. Lateron since the defendant failed to deliver back possession, the plaintiff was required to institute the suit.

3. The defendant admitted that the sale deed of the plot is in the name of the plaintiff. However, he raised a defence that the funds for the purchase of the plot were

provided by him and merely the sale deed was obtained in the name of the plaintiff. Thus the defendant is the real owner of the plot, the plaintiff being Benamidar.

4. From the above pleadings, it may be seen that the burden of proving title to the suit plot heavily rested on the defendant because the sale deed admittedly stood in the name of the plaintiff. However, the trial Court placed the entire burden on the plaintiff and did not frame any issue laying the burden on the defendant. The same error was repeated by the first appellate Court.

5. The second appeal preferred by the plaintiff came to be dismissed in limine without considering the aspect of wrong placement of burden of proof on the plaintiff. Hence I think it expedient to review the order of dismissal of the second appeal.

6. Consequently the review application is allowed and the appeal is restored to file.

JUDGE

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